

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

ALBERT MIKHAYLOVICH BARATOV, : Civil Action No. 17-3775 (RMB)
Plaintiff, : Motion for Relief from Judgment
v. : pursuant to Rule 60(b)(2) of the
THOMAS R. KANE, et. al., : Federal Rules of Civil Procedure
Defendant(s). : EXPEDITED MOTION

RECEIVED

JUL - 5 2018

TO THE HONORABLE RENE MARIE BUMB,
United States District Court Judge:

ALBERT MIKHAYLOVICH BARATOV ("Baratov"), pro se, seeks relief from the final Judgment entered in this matter on May 24, 2018 pursuant to Federal Rules of Civil Procedure 60(b)(2). In support of the motion, Mr. Baratov states:

On January 8, 2016 Mr. Baratov was sentenced to 48 months imprisonment on charges of conspiracy to commit bank fraud, a violation of 18 U.S.C. § 1349 by the U.S. District Court for the Southern District of New York. Mr. Baratov's original sentence was vacated and a revised sentence of 40 months was imposed on May 10, 2017. (See Exh. 'A'). Mr. Baratov's projected release date is March 3, 2019. See Exh. 'B' - Sentence Computation. Mr. Baratov's projected release date does not include the statutory 12 months of RRC he is eligible for. Were he to receive 12 months of RRC, he would have transitioned back in March, 2018.

Mr. Baratov filed his complaint in May, 2017 alleging his Unit Team has not recommended nor are they going to recommend RRC placement due to a "Deportable Alien" public safety factor assigned to him. When Mr. Baratov filed his initial complaint, the Defendant's had not updated his sentence in their computer system, leading to a incorrect date being listed as his projected release date, October 1, 2019.

According to the Bureau of Prisons policies, recommendations for RRC placement are ordinarily reviewed with the inmate and Unit Team seventeen to nineteen months before each inmate's probable release date. (Program Statement 7310.04 Community Correction Center Utilization and Transfer Procedures). If the Warden approves

the RRC referral, the Unit Team forwards a completed referral packet for community corrections placement, a process that typically should be completed approximately two months prior to the inmate's maximum recommended range of date. (Id. PS 7310.04 at 12-13).

Based on the error of Mr. Baratov's release date, and the time periods to submit the referral packet, this Court invoked the ripeness doctrine under *Porter-Bey v. B. A. Bledsoe*, 456 F. App'x 109, 111 (3rd Cir. 2012)(affirming denial of an inmate's habeas petition because at the time the inmate filed the petition, he had not yet received a final RRC placement decision) to dismiss the Complaint.

Accordingly, Mr. Baratov's correct projected release date is March 3, 2019 and the time frames for submission of the RRC recommendation and RRC referral packet has long gone and the matter is ripe for consideration by the Court. The Federal Bureau of Prisons has refused to prepare a referral packet for Mr. Baratov based on the "Deportable Alien" PSF, nor have they made the recommendation within the policy statement guidelines. The Unit Team never prepared a referral packet, nor are they going to. Given Mr. Baratov's statutory right to fair consideration under the law raised in his Complaint he is entitled to relief as requested, to wit: fair consideration of up to twelve (12) months of RRC pre-release custody. It's worth noting Mr. Baratov only has eight (8) months remaining on his sentence.

ARGUMENT

Rule 60(b) allows a party to seek relief from a final judgment under a limited set of circumstances, including (2) fraud, mistake, and newly discovered evidence. Fed.R.Civ.P. 60(b); *Gonzalez v. Crosby*, 545 U.S. 254, 528, 125 S. Ct 2641 (2005). The general purpose of the Rule is "to strike a proper balance between the conflicting principles that litigation must be brought to an end and justice be done." *Bougher v. Sec'y of Health, Educ. and Welfare*, 572 F.2d 976, 977 (3d Cir. 1978). The decision to grant or deny relief pursuant to Rule 60(b) lies in the "sound discretion of the trial court," and is guided by acceptable legal principles applied in light of the relevant circumstances. *Pierce Associates, inc. v. Nemours Foundation*, 865 F.2d 530, 540 (3d Cir. 1998).

The Court relying on the error that Mr. Baratov's projected release date is October 1, 2019, the fact that ICE has still not issued a Warrant for removal after the IHP hearing, the fact that Mr. Baratov is a stateless person, and the plain and

clear language of 18 U.S.C. §3624, Mr. Baratov's claim is ripe and the Court should grant relief from the judgment and consider the merits of his Complaint. Under Porter-Bey, Mr. Baratov's motion is no longer premature and is ripe for adjudication.

Mr. Baratov's projected date of March 3, 2019, per BOP policy 7310.04, his Unit Team should have recommended RRC placement and established a recommended range date since August, 2017 - October, 2017, but they have made no such recommendation. Indeed, based on a projected release date of March 3, 2019, his Unit Team should have prepared a completed referral package two months prior to the inmate's maximum recommended range of date. (Id. PS 7310.04 at 12-13). Mr. Baratov contends that he is eligible for up to twelve months of RRC, thus his referral package should have been completed in January, 2018. Mr. Baratov's Unit Team has repeatedly advised him, despite the statutory authority, they will not do a referral package for him. Mr. Baratov has no other avenues of relief.

WHEREFORE, ALBERT MIKHAYLOVICH BARATOV, respectfully prays this Honorable Court vacate the judgment issued on May 24, 2018, and consider the merits of his matter since it is ripe, as soon as possible since Mr. Baratov's placement or consideration thereof is well past the established BOP guidelines and any other relief the Court deems just and proper.

Respectfully submitted this 1st day of July, 2018.


Albert Mikhaylovich Baratov,
Reg # 72426-054
LSCI Allenwood
PO Box 1000
White Deer, PA 17887

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on Jessica O'Neill, Asst. U.S. Attorney, 401 Market Street, 4th Fl, P O Box 298 Camden, NJ 08101 on this 1st day of July, 2018, postage prepaid, properly addressed via the prison mail system. On the same day I caused a copy to be submitted to the Clerk of Court for filing via CM/ECF and notifications to all parties.


Albert Mikhaylovich Baratov

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

ALBERT BARATOV

JUDGMENT IN A CRIMINAL CASE

Case Number: 1: 15 CR 00421-001 (PKC)

USM Number: 72426-054

Albert Yukhanan Dayan, Esq. (David Lewis, AUSA)

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) one.

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 1349	Conspiracy to Commit Bank Fraud	11/30/2010	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

USDC ADNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>5/11/17</u>

5/10/2017
Date of Imposition of Judgment

Signature of Judge

Hon. P. Kevin Castel, U.S.D.J.
Name and Title of Judge

Date

5-10-17

DEFENDANT: ALBERT BARATOV

CASE NUMBER: 1: 15 CR 00421-001 (PKC)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

forty (40) months.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

EXHIBIT A

ALFG2 540*23 *	SENTENCE MONITORING	*	02-21-2018
PAGE 001 *	COMPUTATION DATA	*	08:18:03
	AS OF 02-21-2018		

REGNO.: 72426-054 NAME: BARATOV, ALBERT

FBI NO.....: 255447AB4	DATE OF BIRTH: 09-10-1975 AGE: 42
ARS1.....: ALF/A-DES	
UNIT.....: LYCOMING	QUARTERS.....: L06-191U
DETAINERS.....: YES	NOTIFICATIONS: NO

HOME DETENTION ELIGIBILITY DATE: 11-03-2018

THE FOLLOWING SENTENCE DATA IS FOR THE ~~INMATE'S~~ CURRENT COMMITMENT.
 THE INMATE IS PROJECTED FOR RELEASE: 03-03-2019 ~~VIA GCT REL~~

RELEASE AUDIT COMPLETED ON 02-20-2018 BY DSCC
 -----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: NEW YORK, SOUTHERN DISTRICT
 DOCKET NUMBER.....: 1: 15 CR 00421-001 (
 JUDGE.....: CASTEL
 DATE SENTENCED/PROBATION IMPOSED: 01-08-2016
 DATE COMMITTED.....: 04-08-2016
 HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
 PROBATION IMPOSED.....: NO

FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.: \$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION....: PROPERTY: NO SERVICES: NO AMOUNT: \$1,300,000.00

REMARKS.....: DKT: 1: 15 CR 00421-001 (PKC)

-----CURRENT OBLIGATION NO: 010 -----
 OFFENSE CODE....: 156
 OFF/CHG: 18:1349:CONSPIRACY TO COMMIT BANK FRAUD

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
 SENTENCE IMPOSED/TIME TO SERVE.: 48 MONTHS
 TERM OF SUPERVISION.....: 3 YEARS
 NEW SENTENCE IMPOSED.....: ~~40 MONTHS~~
 BASIS FOR CHANGE.....: COURT ORDER MODIFYING SENTENCE
 DATE OF OFFENSE.....: 11-30-2010

G0002 MORE PAGES TO FOLLOW . . .

EXHIBIT B

ALFG2 540*23 *
PAGE 002 *SENTENCE MONITORING
COMPUTATION DATA
AS OF 02-21-2018* 02-21-2018
* 08:18:03

REGNO.: 72426-054 NAME: BARATOV, ALBERT

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 02-16-2018 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 02-16-2018 BY DESIG/SENTENCE COMPUTATION CTRTHE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: 04-08-2016

TOTAL TERM IN EFFECT.....: 40 MONTHS

TOTAL TERM IN EFFECT CONVERTED...: 3 YEARS 4 MONTHS

EARLIEST DATE OF OFFENSE.....: 11-30-2010

JAIL CREDIT.....: FROM DATE THRU DATE
07-01-2015 07-01-2015

TOTAL PRIOR CREDIT TIME.....: 1

TOTAL INOPERATIVE TIME.....: 0

TOTAL GCT EARNED AND PROJECTED..: 156

TOTAL GCT EARNED.....: 54

STATUTORY RELEASE DATE PROJECTED: 03-03-2019

EXPIRATION FULL TERM DATE.....: 08-06-2019

TIME SERVED.....: 1 YEARS 10 MONTHS 15 DAYS

PERCENTAGE OF FULL TERM SERVED..: 56.3

PROJECTED SATISFACTION DATE.....: 03-03-2019

PROJECTED SATISFACTION METHOD...: GCT REL

REMARKS.....: 04-18-16:COMP ENTERED, V/S ON 04-08-16 FTD. JDB/D

02-16-18:ORIGINAL SENTENCE VACATED INMATE RESENTENCED TO 40MOS
. JDB/D

G0002

MORE PAGES TO FOLLOW . . .

INMATE NAME/NUMBER: Albert Mikhaylovich Baratov, Reg #72426-054
FEDERAL CORRECTIONAL COMPLEX-ALLENWOOD Low
P.O. BOX 1000
WHITE DEER, PA 17887



2017 1070 0000 8749 4414

LEGAL MAIL

Label 3800-N, January 2014.

PSN 7690-17-000-0906

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JUL - 5 2018

AT 8:30

WILLIAM T. WILSON, M.
United States District Court
District Court of New Jersey
400 Cooper Street, Room 1050
Camden, NJ 08102-1570

0810281570-0004

|||||/|||||/|||||/|||||/|||||/|||||/|||||/|||||/|||||/|||||/|||||/|||||/|||||/

